

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stacy Frigerio	Team: Team # 2	CCRB Case #: 201100834	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/06/2011 4:37 PM	Location of Incident: 45th Avenue between Bowne Street and Smart Street	Precinct: 109	18 Mo. SOL 7/6/2012	EO SOL 7/6/2012	
Date/Time CV Reported Thu, 01/20/2011 3:22 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/20/2011 3:22 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Won Chang	29627	928055	PBQN AC
2. DTS Jae Moon	06010	935342	PBQN AC

Officer(s)	Allegation	Investigator Recommendation
A.POM Won Chang	Abuse: PO Won Chang stopped § 87(2)(b)	
B.DTS Jae Moon	Abuse: Detective Jae Moon stopped § 87(2)(b)	
C.POM Won Chang	Abuse: PO Won Chang frisked § 87(2)(b)	
D.POM Won Chang	Abuse: PO Won Chang searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### Case Summary

On January 20, 2011, § 87(2)(b) filed this complaint with the CCRB via the telephone (encl. B1-B2). On January 6, 2011, at approximately 4:27 p.m., § 87(2)(b) arrived at a restaurant located on 45<sup>th</sup> Avenue between Bowne Street and Smart Street in Queens with his friend, § 87(2)(b) when the following allegations resulted:

- **Allegation A – Abuse of Authority: PO Won Chang stopped** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

- **Allegation B – Abuse of Authority: Detective Jae Moon stopped** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

**Allegation B** be closed as **victim uncooperative**.

- **Allegation C – Abuse of Authority: PO Won Chang frisked** § 87(2)(b)

- **Allegation D – Abuse of Authority: PO Won Chang searched** § 87(2)(b)

§ 87(2)(g)

- § 87(2)(g), § 87(4-b)

On January 31, 2011, during his sworn statement, § 87(2)(b) rejected mediation and stated that he did not want to see the officers again.

### Results of Investigation

#### Civilian Statement(s)

##### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) male, 6'0" tall, 175 lbs., with brown hair, and brown eyes.

§ 87(2)(b)

#### CCRB Testimony

On January 31, 2011, § 87(2)(b) was interviewed at the CCRB (encl. B3-B6). On January 6, 2011, § 87(2)(b) and his friend, § 87(2)(b) walked from § 87(2)(b)'s house to a restaurant called La Antioquena located at 143-10 45<sup>th</sup> Avenue in Queens. § 87(2)(b) and § 87(2)(b) made no stops prior to encountering the officers, and § 87(2)(b) did not notice the officers prior to interacting with them. At approximately 4:27 p.m., § 87(2)(b) and § 87(2)(b) arrived at 45<sup>th</sup> Avenue between Bowne Street and Smart Street. § 87(2)(b) entered La Antioquena and PO Won Chang, who was identified via the Stop, Question and Frisk report, approached § 87(2)(b) PO Chang's partner, Det. Jae Moon,

stood outside the restaurant with § 87(2)(b) did not enter the restaurant. PO Chang and Det. Moon wore black North Face fleeces and blue jeans, and drove a black Crown Victoria. Their license plate started “DBW” and the last four numbers had a four and a three in it. PO Chang was the passenger and Det. Moon was the driver. PO Chang asked § 87(2)(b) where he was going and if he knew who he was. § 87(2)(b) told PO Chang that he was going to get something to eat and that he did not know who PO Chang was. PO Chang instructed § 87(2)(b) to exit the restaurant. The officers did not identify themselves or display their badges. § 87(2)(b) and PO Chang walked approximately 10 to 20 feet from the restaurant to where the officers’ vehicle was parked by a bus stop. PO Chang asked § 87(2)(b) where he was going and § 87(2)(b) stated he was going to get food.

PO Chang instructed § 87(2)(b) to stand against a gate and he complied. PO Chang asked § 87(2)(b) if he had anything on him and told § 87(2)(b) that he smelled like marijuana. § 87(2)(b) responded that he did not have marijuana, that he did not smoke marijuana, and that he did not know what he was talking about. PO Chang frisked § 87(2)(b) and asked for his identification. As § 87(2)(b) proceeded to take out his wallet from his pocket, PO Chang told him not to do anything rash. § 87(2)(b) removed his wallet, took his ID out of his wallet and handed it to PO Chang. PO Chang went through § 87(2)(b)’s wallet and PO Chang entered all of his pockets. § 87(2)(b) wore a black North Face raincoat, blue jeans, and Timberland boots. § 87(2)(b) wore a brown sweater, navy blue jeans, and brown boots.

Meanwhile, § 87(2)(b) was interacting with Det. Moon about 10 feet away. Det. Moon asked § 87(2)(b) for ID and asked him why he was traveling so far to eat food. § 87(2)(b) could not hear what § 87(2)(b) and Det. Moon were discussing, but he heard them giggling. § 87(2)(b) and § 87(2)(b) stood approximately 8 feet apart from each other. § 87(2)(b) was not placed against anything and stood on the sidewalk. PO Chang removed § 87(2)(b)’s metrocard from his left rear pants pocket, and his tape measure and small knife from his left front pants pocket. § 87(2)(b) did not have anything else in his pockets. PO Chang informed § 87(2)(b) that his knife was illegal and § 87(2)(b) stated that it was not. PO Chang asked § 87(2)(b) what he was doing there stating that it was far from where § 87(2)(b) lived. § 87(2)(b) told PO Chang that there were no restaurants where he lived. PO Chang did not ask § 87(2)(b) any other questions. PO Chang entered their vehicle with § 87(2)(b)’s ID and exited very quickly. PO Chang returned § 87(2)(b)’s ID to him. § 87(2)(b) did not see Det. Moon frisk or search § 87(2)(b). PO Chang and Det. Moon entered their vehicle, made a U-turn, and drove away.

**Victim:** § 87(2)(b)

### **CCRB Telephone Testimony**

On January 31, 2011, § 87(2)(b) provided the following telephone statement (encl. B7). On January 6, 2011, at approximately 4:37 p.m., § 87(2)(b) and § 87(2)(b) were on their way to get something to eat. On 45<sup>th</sup> Avenue and Parsons Boulevard in Queens, two plainclothes officers in a black Crown Victoria made a U-turn and pulled over after they drove by and saw § 87(2)(b) and § 87(2)(b). The officers exited their vehicle. Det. Moon was the driver. Det. Moon spoke to § 87(2)(b) while PO Chang told § 87(2)(b) to get against the wall and PO Chang searched § 87(2)(b). PO Chang frisked § 87(2)(b). PO Chang entered § 87(2)(b)’s pants and jacket pockets. PO Chang removed § 87(2)(b)’s wallet, keys, and cellular phone from his pockets. Det. Moon asked § 87(2)(b) what they were going to do, what he was doing with § 87(2)(b) and what they were doing in the area. Det. Moon did not speak to § 87(2)(b). § 87(2)(b) asked Det. Moon why they were stopped and Det. Moon

told § 87(2)(b) to mind his own business. Det. Moon asked § 87(2)(b) for his identification and PO Chang asked § 87(2)(b) for his. Det. Moon wrote down § 87(2)(b)'s information and returned his ID. Det. Moon spoke to § 87(2)(b) for two or three minutes while PO Chang stood by the officers' vehicle. § 87(2)(b) could not hear the conversation between Det. Moon and § 87(2)(b). The incident lasted about five minutes. § 87(2)(b) has interacted with PO Chang once prior to this incident.

### **Attempts to Contact Civilians**

During § 87(2)(b)'s telephone statement on January 31, 2011, he did not want to schedule an appointment to provide a sworn statement and stated he would call the CCRB back to schedule one. On February 2, 2011, § 87(2)(b) scheduled an appointment for February 7, 2011. On February 7, 2011, § 87(2)(b) missed his appointment. § 87(2)(b) was called three more times, but he did not respond to the CCRB to schedule another appointment.

### **NYPD Statement(s):**

#### **Subject Officer: PO WON CHANG**

- *PO Chang is a § 87(2)(b).*
- *On January 6, 2011, PO Chang worked with Detective Moon between 6:00 a.m. and 5:35 p.m. PO Chang is assigned to the BLAST unit or burglary investigation unit, and was doing surveillance. He wore plainclothes and was assigned to a silver vehicle.*

#### **Memo Book**

PO Chang did not make a memo book entry regarding this incident (encl. C1-C2).

#### **Stop, Question and Frisk Report**

PO Chang prepared handwritten Stop, Question and Frisk Report 2011-109-00073, which indicates that § 87(2)(b) was stopped on January 6, 2011, at 4:50 p.m., because he was suspected of burglary (encl. C3-C5). The circumstances that led to the stop included fitting a description, actions indicative of acting as a lookout, and furtive movements. The incident location was reported as Robinson Street and 45<sup>th</sup> Avenue in Queens. Additional factors were a high incidence of reported offense, time of day/week corresponding to criminal activity, proximity to scene of suspected offense, sights and sounds of criminal activity, and changing directions at the sight of officer. The report indicates that § 87(2)(b) was frisked and searched. It also indicates that he was frisked because of his refusal to comply with officers' directions and his furtive movements, and he was searched because of a hard object. § 87(2)(b)'s demeanor was calm. It is unclear from the handwritten report whether another individual was stopped and the computerized report notes that the no other person was stopped.

#### **CCRB Testimony**

On April 26, 2011, PO Chang was interviewed at the CCRB (encl. C6-C7). On January 6, 2011, at approximately 4:37 p.m., § 87(2)(b) was walking down the street in the vicinity of 45<sup>th</sup> Avenue between Bowne Street and Smart Street in Queens and "casing houses" which PO Chang explained was standing in front of different houses and looking at the houses with the intention of breaking into one. The area is residential and there are no stores where PO Chang observed § 87(2)(b) stood on the sidewalk as he looked at the houses and was less than 10 feet from the front door of the houses. PO Chang stood approximately 30 feet

behind § 87(2)(b) as he observed § 87(2)(b). Detective Moon was approximately 40 to 50 feet behind PO Chang. PO Chang observed § 87(2)(b) for approximately 10 minutes. § 87(2)(b) stopped to look at about 4 or 5 houses. § 87(2)(b) did not do anything else prior to being stopped. § 87(2)(b) was alone and did not speak to anyone before PO Chang stopped him. There had been a report of a burglary of a house that week in the same sector, but he could not remember the specific location. The house had been broken into from a window on a side door. The description PO Chang had of someone who had burglarized in the area was a Hispanic male in his 20s, 5'5" to 5'7" tall. § 87(2)(b) fit this description. However, this was not an investigation into that specific burglary.

PO Chang stopped § 87(2)(b). PO Chang approached § 87(2)(b) pulled out his shield and stated that he was a police officer. Detective Moon did not interact with § 87(2)(b). PO Chang asked him for his name and where he lived. PO Chang asked § 87(2)(b) if he had anything he should not have. PO Chang frisked § 87(2)(b) because he had a bulge in his pocket. The bulge was the size of an average computer mouse and did not take a particular shape. PO Chang then explained that he had asked § 87(2)(b) if he could frisk him and § 87(2)(b) replied "Go ahead." PO Chang frisked § 87(2)(b) and felt that the bulge was a hard object. The bulge in § 87(2)(b)'s pocket was a cellular phone. When asked if PO Chang searched § 87(2)(b) he stated "yes." The NYPD representative asked him how he found out it was a cellular phone. Then PO Chang stated that he asked § 87(2)(b) what was in his pocket and § 87(2)(b) stated that it was a cellular phone. The representative stated, "so you didn't go into the pocket to pull it out?" PO Chang confirmed that he did not go into the pocket to remove the cellular phone because he could tell that it was a cellular phone when he frisked him. When asked if PO Chang went into any of § 87(2)(b)'s pockets, he stated "yes." The representative asked PO Chang if he frisked § 87(2)(b). PO Chang explained that he frisked § 87(2)(b) and that § 87(2)(b) opened his pocket, and the representative stated, "but you didn't go into any of the pockets?" PO Chang responded, "no" and that he did not go into his pockets. § 87(2)(b) opened his pocket and PO Chang looked in and saw the cellular phone. § 87(2)(b) did not remove anything from his pockets. PO Chang did not go into any of § 87(2)(b)'s pockets. PO Chang explained to § 87(2)(b) why he was stopped. PO Chang prepared a Stop, Question and Frisk report for § 87(2)(b).

PO Chang explained that the refusal to comply with the officer's directions, which was marked on the Stop, Question and Frisk report, meant that § 87(2)(b) had put his hands inside his pocket and took a few steps back, and PO Chang had to tell § 87(2)(b) to take his hands out of his pockets. PO Chang feared for his safety because § 87(2)(b) would not follow his instructions. PO Chang stated that the Stop, Question and Frisk report was correct where he indicated that § 87(2)(b) was searched. PO Chang then explained that he did not go into § 87(2)(b)'s pocket(s), and that § 87(2)(b) opened the pocket where the bulge was and showed it to him. The bulge was in the left pocket of § 87(2)(b)'s jacket and PO Chang could see that it was a cellular phone. PO Chang did not feel any other objects during the frisk. There were several open complaint reports regarding burglaries in the sector. The burglaries generally occurred between 9:00 a.m. to 6:00 p.m. PO Chang did not recall if there was anyone else in the vicinity at the time of the incident. PO Chang confirmed that § 87(2)(b) changed directions at the sight of the officer as marked on the Stop, Question and Frisk report.

**Witness Officer: DETECTIVE JAE MOON**

- *Det. Moon is a § 87(2)(b).*
- *On January 6, 2011, Det. Moon worked from 9:30 a.m. until 6:05 p.m. in plainclothes and in a black Mercury vehicle. He was assigned to anti-crime and focused on burglaries.*

### **Memo Book**

Det. Moon did not have any memo book entries regarding this incident (encl. C8-C9).

### **CCRB Testimony**

On May 19, 2011, Det. Moon was interviewed at the CCRB (encl. C10-C11). On January 6, 2011, at approximately 4:37 p.m., Det. Moon and PO Chang were on patrol and PO Chang brought to Det. Moon's attention that an individual inside the vehicle was possibly "casing" houses and burglary in the vicinity of 45<sup>th</sup> Avenue between Bowne Street and Smart Street. PO Chang made the observation of § 87(2)(b) and PO Chang did not inform Det. Moon regarding what specifically he saw. PO Chang filled out a Stop, Question and Frisk report. Det. Moon did not recall the type of vehicle that was stopped. They used their turret lights to stop the vehicle.

Det. Moon recalled § 87(2)(b) from his photograph, but did not recall his name and was unsure if he had interacted with § 87(2)(b) on the date of the incident. § 87(2)(b) was not alone; he was with a male individual. PO Chang and Det. Moon approached § 87(2)(b). PO Chang did most of the talking. Det. Moon did not have any verbal contact with § 87(2)(b). Det. Moon did not recall if § 87(2)(b) exited the vehicle. Det. Moon did not recall what happened during the stop. Det. Moon did not recall anything about marijuana. Det. Moon confirmed there was no report of a burglary, but the area is burglary prone and so his unit was specifically assigned to patrol that area. Det. Moon did not recall the demeanor of the civilians. Det. Moon did not recall if PO Chang frisked or searched § 87(2)(b). Det. Moon did not recall if § 87(2)(b) was asked any questions. § 87(2)(b) was probably released because no crime was committed. The interaction lasted approximately five minutes.

### **NYPD Document(s)**

#### **Management Information Systems Division and the NYS Police Superintendent**

Both MISD and the NYS Police Superintendent check of records yielded negative results for a warrant check conduct for § 87(2)(b) and § 87(2)(b) on the date of the incident (encl. D3-D4, E8).

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of June 10, 2011 with regard to the incident (encl. ).

[illegible]

- CCRB – Confidential

## **Investigative Findings and Recommendations**

### **Allegation A – Abuse of Authority: PO Won Chang stopped § 87(2)(b)**

It is undisputed that PO Chang stopped § 87(2)(b) § 87(2)(g).  
Detective Moon recognized § 87(2)(b) from a photograph of him and stated that he was accompanied by a male individual. However, Detective Moon believed this incident involved a vehicle stop and he did not recall the details of the incident, including whether PO Chang frisked or searched § 87(2)(b).

Meanwhile, there were discrepancies between PO Chang and § 87(2)(b)'s accounts. The handwritten Stop, Question, and Frisk report prepared by PO Chang indicates that the incident occurred at Robinson Street and 45<sup>th</sup> Avenue, which is approximately one block from the incident location § 87(2)(b) reported. The intersection reported by PO Chang as the incident location is entirely residential as he testified and the incident location which § 87(2)(b) reported is commercial and is the location of the restaurant he claimed he entered and encountered PO Chang. § 87(2)(b) stated that he and his friend, § 87(2)(b), had walked from his house to a restaurant located on 45<sup>th</sup> Avenue between Bowne Street and Smart Street prior to interacting with the officers and they did make any stops during this walk. When they arrived at the restaurant, § 87(2)(b) entered the restaurant and PO Chang directed § 87(2)(b) to exit. § 87(2)(b) never entered the restaurant and stood outside with Detective Moon. PO Chang asked § 87(2)(b) where he was going and whether he had marijuana on his person because he smelled like marijuana. PO Chang subsequently frisked § 87(2)(b) and removed all the items from his pockets. § 87(2)(b) generally corroborated § 87(2)(b)'s account of the incident in his telephone statement, but provided a nearby intersection as the incident location. PO Chang, on the other hand, stated that § 87(2)(b) was alone and there is no Stop, Question, and Frisk report or other documentation for § 87(2)(b). PO Chang stated that he observed § 87(2)(b) “casing houses.” PO Chang elaborated, stating that § 87(2)(b) peered at four or five houses from the sidewalk approximately 10 feet away from the front door of the houses. While PO Chang also indicated that the area is a burglary prone location, § 87(2)(b)'s behavior as described by PO Chang could be construed as innocuous behavior even if it occurred in such an area. § 87(2)(b), § 87(2)(g)

While the stop is not in dispute, § 87(2)(b), § 87(2)(g).  
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### **Allegation B – Abuse of Authority: Detective Jae Moon stopped § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b) alleged that Detective Moon asked § 87(2)(b) for his identification. Detective Moon stated that PO Chang made the observation which led to the stop and he was unsure of the circumstances of the stop. There is no Stop, Question, and Frisk report or other documentation of the stop of § 87(2)(b) and PO Chang stated that § 87(2)(b) was alone during the incident. Detective Moon recognized § 87(2)(b) from a photograph of him



and stated that § 87(2)(b) was accompanied by a male individual, but Detective Moon believed this incident involved a vehicle stop and did not recall the details of the incident.

§ 87(2)(b), § 87(2)(g)

**Allegation C – Abuse of Authority: PO Won Chang frisked § 87(2)(b)**

**Allegation D – Abuse of Authority: PO Won Chang searched § 87(2)(b)**

§ 87(2)(b) alleged that PO Chang asked him where he was going and whether he had marijuana on his person because he smelled like marijuana, after which PO Chang frisked § 87(2)(b) and removed all the items from his pockets. § 87(2)(b) corroborated § 87(2)(b)'s allegations.

The handwritten Stop, Question, and Frisk report prepared by PO Chang indicates that § 87(2)(b) was frisked and searched. PO Chang stated that upon approaching § 87(2)(b) PO Chang asked § 87(2)(b) if he had anything he should not have, and proceeded to frisk § 87(2)(b) because he had a bulge in his pocket. However, PO Chang did not note that he observed a suspicious bulge as one of the reasons for frisking § 87(2)(b) in the Stop, Question and Frisk report. PO Chang then explained that § 87(2)(b) had put his hands inside his pocket and took a few steps back, so PO Chang asked § 87(2)(b) to take his hands out of his pockets. § 87(2)(b) did not follow PO Chang's directions and PO Chang feared for his safety, so he asked § 87(2)(b) if he could frisk him and § 87(2)(b) allowed him to. While PO Chang stated that the frisk was consensual, § 87(2)(b) did not make this claim § 87(2)(g).

PO Chang stated that he had searched § 87(2)(b) as indicated on the handwritten Stop, Question and Frisk report he prepared. PO Chang soon after stated that he did not enter any of § 87(2)(b)'s pockets because he could tell when he frisked him that the hard object was a cellular phone, but shortly after answered that he did. PO Chang then explained that he only asked § 87(2)(b) to open his pocket when he felt a hard object where the bulge was located in his pocket. PO Chang subsequently looked inside § 87(2)(b)'s pocket and saw that it was a cellular phone.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

[Redacted text block]

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Team: 2

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Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date